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| 10/602,257 | 06/23/2003 | Marshall H. Warren | 02385-01 | 1912 |
| 7590 | | 06/08/2004 | EXAMINER | |
| Walter L. Beavers | | ARK, DARREN W | | |
| 326 South Eugene Street | | ART UNIT | | |
| Greensboro, NC 27401 | | PAPER NUMBER | | |
| | | 3643 | | |

DATE MAILED: 06/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/602,257

Applicant(s)

WARREN, MARSHALL H.

Examiner

Darren W. Ark

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6/23/03.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Claim Objections

1. Claim 10 is objected to because of the following informalities:

Claim 10, line 1, "10" should be replaced with "9".

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-6, 8-12, 14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by WO 86/02806 to Morellini.

Morellini discloses a bait tube (11), a pest channel (12, 16), a shroud (13 made of plastic) with an opening (where 11 passes thru 13), the bait tube in the opening (see Fig. 3), an anchor (23 with water therein), first and second anchor guides (24), and a cap (18).

4. Claims 1, 2, 4-6, 8-12, 14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ferraro 4,630,392.

Ferraro discloses a bait station (see Fig. 2) comprising a pest channel (20), a bait tube (34) connected to the channel and in communication therewith (see Fig. 3), a

Art Unit: 3643

flexible shroud (wall 38 of dumpster; sheet metal is flexible to a small degree) with an opening (aperture in 38), first and second anchor guides (threads on 44) with an anchor (46) positioned therein (threads of 46 extend into threads of 44), and a cap (see Fig. 3).

5. Claims 1, 2, 4, 5, 8-12, 14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Baker 4,400,904.

Baker discloses a bait station (210) comprising a pest channel (216), a bait tube (222) connected to the channel and in communication therewith (see Figs. 1-3), a flexible shroud (225; all materials are flexible to a certain extent) with an opening (adjacent 223), a first anchor guide (threads on 54) attached to the bait tube (54 attached to 222 via 216) with an anchor (stake extending through 54) positioned therein, and a cap (224).

6. Claims 9-12, 14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Washburn 6,374,536.

Washburn discloses a bait station (10) comprising a pest channel (15), a bait tube (17) connected to the channel and in communication therewith (see Fig. 1), an anchor guide (18) with an anchor (dirt/soil therein).

7. Claims 1-6, 8-12, 14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hirose et al. 5,921,018.

Hirose et al. discloses a bait station (see Fig. 1) comprising a pest channel (5), a bait tube (3, 4) connected to the channel and in communication therewith (see Fig. 1) and connected to form an inverted T-shape (see connection of 4 to 5 which depends on point of reference), a flexible shroud (1 of plastic sheet [the sheet has not been

Art Unit: 3643

particularly claimed]) with an opening (where 3 is located) with the bait tube (3) positioned in the shroud opening, first and second anchor guides (12), an anchor attached to the bait tube (widened parts of 4 serve to assist in anchoring in the ground), and a cap (3; cap is not particularly defined).

In regard to claims 9-12 and 14, Hirose et al. discloses a bait station (see Fig. 1) comprising a pest channel (5), a bait tube (4) connected to the channel and in communication therewith (see Fig. 1) and connected to form an inverted T-shape (see connection of 4 to 5 which depends on point of reference), a shroud (1) with an opening, an anchor guide (portion of 1 where 3 resides) with an anchor (3; anchor not particularly claimed).

8. Claims 1, 4-6, 9-12, 14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Great Britain Pat. No. 2,249,249 to Graves.

Graves discloses a bait tube (11), a pest channel (14), a shroud (12) with an opening (open bottom of 12; see Fig. 2), the bait tube in the opening (see Fig. 2), an anchor (weight 16), first and second anchor guides (portions of 15 holding 16), a cap (17; cap not particularly claimed).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 7, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 86/02806 to Morellini.

In regard to claim 7, Morellini discloses the anchor (14) being a hollow plastic rod, but does not disclose the anchor being a metal rod. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the shroud flexible and out of a polymer, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, and because a metal rod would provide rigidity when penetrating hard ground surfaces. *In re Leshin*, 125 USPQ 416.

In regard to claim 13, Morellini discloses poisoned rodent bait, but does not disclose the bait comprising Chlorophacinone-Liphadione. It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize Chlorophacinone-Liphadione as bait, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, and because a person of ordinary skill in the art would use any rodenticide which effectively kills rodents upon ingestion. *In re Leshin*, 125 USPQ 416.

11. Claims 2, 3, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferraro 4,630,392.

In regard to claims 2 and 3, Ferraro does not disclose the shroud being flexible polymeric material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the shroud flexible and out of a polymer, since

Art Unit: 3643

it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, and because a flexible shroud would be less prone to breakage, lightweight, and also polymeric materials can be molded into different sizes and colors very inexpensively. *In re Leshin*, 125 USPQ 416.

In regard to claim 13, Ferraro discloses poisoned rodent bait, but does not disclose the bait comprising Chlorophacinone-Liphadione. It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize Chlorophacinone-Liphadione as bait, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, and because a person of ordinary skill in the art would use any rodenticide which effectively kills rodents upon ingestion. *In re Leshin*, 125 USPQ 416.

12. Claims 5-7, 11, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferraro 4,630,392 in view of Willis 4,611,426.

Alternatively, Ferraro does not disclose first and second anchor guides with an anchor comprising a metal rod. Willis discloses anchor guides (40) for receiving an anchor in the form of a metal rod (nails or pins). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to substitute the anchor guides and anchor of Ferraro for the anchor guides adapted to receive an anchor in the form of a metal rod of Willis in order to allow the device to be quickly secured to a surface with means not requiring intensive manipulation on the part of the user.

Art Unit: 3643

13. Claims 2, 3, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker 4,400,904.

Baker does not disclose the shroud being of flexible polymer. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the shroud flexible and out of a polymer, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, and because a flexible shroud would be less prone to breakage, lightweight, and also polymeric materials can be molded into different sizes and colors very inexpensively. *In re Leshin*, 125 USPQ 416.

In regard to claim 13, Ferraro discloses poisoned rodent bait, but does not disclose the bait comprising Chlorophacinone-Liphadione. It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize Chlorophacinone-Liphadione as bait, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, and because a person of ordinary skill in the art would use any rodenticide which effectively kills rodents upon ingestion. *In re Leshin*, 125 USPQ 416.

14. Claims 6, 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker 4,400,904 in view of Willis 4,611,426.

Baker does not disclose a second anchor guide with an anchor comprising a metal rod. Willis discloses anchor guides (40) for receiving an anchor in the form of a

Art Unit: 3643

metal rod (nails or pins). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ the second anchor guide and metal rod anchor of Ferraro in the device of Willis in order to anchor the device on lateral sides of the device for stability and also to anchor the device with a metal rod in order to use sturdy anchors for entering hard surfaces.

15. Claims 2, 3, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Great Britain Pat. No. 2,249,249 to Graves.

In regard to claims 2 and 3, Graves does not disclose the shroud being flexible or being polymeric. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the shroud flexible and out of a polymer, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, and because a flexible shroud would be less prone to breakage and also polymeric materials can be molded into different sizes and colors very inexpensively. *In re Leshin*, 125 USPQ 416.

In regard to claim 13, Graves discloses poisoned rodent bait, but does not disclose the bait comprising Chlorophacinone-Liphadione. It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize Chlorophacinone-Liphadione as bait, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, and because a person of ordinary

Art Unit: 3643

skill in the art would use any rodenticide which effectively kills rodents upon ingestion.

In re Leshin, 125 USPQ 416.

16. Claims 4-7, 11, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Great Britain Pat. No. 2,249,249 to Graves in view of French Pat. No. 2,232,991 to Calvez.

Graves does not disclose an anchor guide with an anchor passing therethrough. Calvez generally discloses a bait tube (1, 8) with an anchor comprising a rod (14, 15) attached thereto, and first and second anchor guides (upper and lower apertures of 16). It would have been obvious to a person of ordinary skill in the art to modify the device of Graves such that it has an anchor comprising a rod attached to the bait tube in view of Calvez in order to provide means for maintaining the location of the bait station that will penetrate the ground and hold it thereat.

Graves and Calvez discloses the claimed invention except for the rod being metal. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the rod metal, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, and because a metal rod would be sturdy enough to withstand larger forces required to penetrate harder ground surfaces. *In re Leshin*, 125 USPQ 416.

Art Unit: 3643

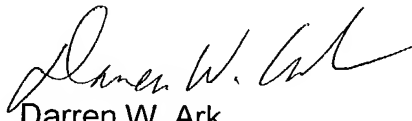
Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hicks '131 discloses a shroud (19); Yates '445 discloses a bait tube (21) and pest channel (6) in an inverted t-shape.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (703) 305-3733. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Darren W. Ark
Primary Examiner
Art Unit 3643

DWA